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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.406 OF 2004

Arjun Barkya Godhale
Convict No.2429,
Kolhapur Central Prison
Kolhapur ... Appellant

V/s.

The State of Maharashtra ... Respondent

Mrs.Latika P. Nevrekar for Appellant
Mr.P.S. Hingorani for Respondent

CORAM: **V.G. PALSHIKAR &**
SMT.NISHITA MHATRE, JJ.

DATED: **DECEMBER 4, 2006**

ORAL JUDGMENT (PER SMT.MHATRE, J.):

. The Accused has been convicted and sentenced under section 302 of the Indian Penal Code. The allegation against the accused is that he murdered one Sandeep since he refused to accede to his demand for money. The accused was also charged under section 307 of the Indian Penal Code as he had assaulted his wife Dhanibai with a sickle. He has been acquitted of this charge.

2. It is the case of the prosecution that the complainant was returning home at about 7.30 pm with one Santya when they saw the accused demanding money from Sandeep, the victim. When the victim expressed his

inability to pay the money, the accused inflicted a blow with a sickle on the left side of the chest of the victim. The accused then fled from the spot. The victim succumbed to his injuries soon thereafter at the place where the incident occurred. The complainant lodged a First Information Report with the police regarding the victim's death. He was also told by one Prakash, a tempo rickshaw driver that the accused had injured his wife, Dhanibai with a sickle and that she had been admitted to hospital for treatment. After investigations were complete and the Panchanamas were drawn, the body of the victim was sent for postmortem examination. The accused was apprehended on 21.10.1999 and according to the prosecution, he voluntarily disclosed where he had hidden the weapon of assault. The sickle which was recovered at the instance of the accused had blood stains on it. The accused was tried by the I Adhoc Additional Sessions Judge, Palghar for the offence punishable under section 302 of the Indian Penal Code for having murdered the victim and section 307 for having attempted to murder his wife, Dhanibai.

2. The prosecution has placed reliance on the deposition of 10 witnesses in order to prove its case against the accused. PW2, is the Doctor who conducted the postmortem examination on the dead body of the

victim and has opined that the victim had suffered a homicidal death. He has also opined that the sickle which was seized could have caused the injuries which were found on the victim's body. The Doctor has stated that the postmortem examination disclosed that the victim had sustained a stab injury on the left side of the chest.

3. PW1, who is an eye witness to the incident, is the maternal uncle of the victim. He has stated that he noticed the accused and the victim while returning with one Santya from the market at about 7 pm. He states that the accused was demanding money from the victim for purchasing liquor. Since Sandeep, the victim failed to oblige, the accused who was holding a sickle inflicted an injury on the left side of the victim's chest and then ran away to the forest, taking the sickle with him. This witness has stated that the victim was rushed to hospital after his uncle, PW3, arrived on the scene. This witness is the complainant in this case. He has described the incident as it occurred and has categorically denied the suggestions put to him while being cross-examined that he was unable to see the incident because of the darkness or that there were tall bushes in the field which obstructed his vision. He has categorically stated that he saw the accused landing a

single blow with the sickle on the left side of the victim’s chest.

4. This evidence of PW1 has been corroborated in all material aspects by PW6, Santya, who was accompanying him while returning from the market. He has also narrated the incident of assault. However, he has stated that the time at which the assault occurred was around 8 pm. This is not a material discrepancy in our opinion, given the fact that the witnesses who were deposing were tribals and were unable to give the exact time when the incident occurred. He has also stated that a single blow was inflicted by the accused on the victim.

5. The deposition of both these witnesses has been corroborated by PW3. He is the paternal uncle of the victim. He arrived at the spot when he heard the cries of Sandeep’s mother at about 7.30 pm. He saw the dead body of the victim. He has spoken about the presence of PW1 and PW6 as also Sandeep’s mother. This witness has also stated that the victim was injured on the left side of his chest.

6. The panch witness who was examined as PW4 has spoken about the recovery of the sickle at the instance

of the accused. He has stated that the sickle was hidden under the roof of the hut of the accused.

7. The next witness examined by the prosecution is the Investigating Officer. He has prepared the inquest panchanama and the spot panchanama. Soil samples mixed with blood which was obtained from the spot were sent for chemical analysis. The clothes of the victim and the deceased as also the sickle recovered at the instance of the accused were also forwarded to the chemical analyser for his report. The place from which the sickle was recovered is the same as mentioned by PW4, the panch witness.

8. PW7 is the Doctor who examined Dhanibai, the wife of the accused who was also assaulted by him on 31.10.1999. The wife of the accused is examined as PW9. PW10 is the Police Officer who investigated the assault on PW9. The accused has been acquitted for the attempted murder of his wife by the Sessions Court. This decision has not been challenged by the State and therefore, there is no need for us to consider the evidence of PW7, PW9 and PW10.

10. The report from the chemical analyser which is at exhibit 31 indicates that the victim’s clothes and

the sickle were blood stained. The blood stains on these articles were analysed and it was found that they belonged to 'A' group which was the blood group of the victim. The blood group of the accused has been analysed to be 'O'.

11. In our opinion, the prosecution has therefore, proved that the accused had assaulted the victim with a sickle on the left side of the chest. The ocular evidence of the eye witnesses PW1 and PW6 is corroborated by the medical evidence on record. Their presence at the place of the incident has been proved by PW3. Therefore, the prosecution has proved that the accused has committed the offence of culpable homicide. However, it remains to be seen whether it amounts to murder.

12. Both the eye witnesses have stated that the accused inflicted a single blow on the victim. This is borne out by the medical evidence on record. Both the eye witnesses have stated that the accused became incensed when the victim refused to part with any money to enable the accused to purchase liquor. Therefore, in our opinion, although the prosecution has proved that the accused is guilty of culpable homicide, it has not been successful in proving that it amounts to murder.

The offence with which the accused is punishable is under section 304 Part II, Indian Penal Code. He is accordingly convicted and sentenced under section 304 Part II of the Indian Penal Code.

13. The appeal is, thus, partly allowed. The decision of the I Adhoc Additional Sessions Judge, Palghar convicting and sentencing the accused under section 302 of the Indian Penal Code is set aside and instead the accused is convicted under section 304 Part II of the Indian Penal Code and is sentenced to suffer imprisonment for 7 years. In the event, the accused has already completed his term, the accused shall be set at liberty if not otherwise required in law.